

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF THE APPLICATION TO</b>	)	
<b>APPROVE AN AGREEMENT ALLOCATING</b>	)	<b>CASE NO. AVU-E-02-2</b>
<b>TERRITORY BETWEEN AVISTA UTILITIES</b>	)	
<b>AND KOOTENAI ELECTRIC COOPERATIVE.</b>	)	<b>NOTICE OF APPLICATION</b>
	)	
	)	<b>NOTICE OF MODIFIED</b>
	)	<b>PROCEDURE</b>
	)	
	)	<b>ORDER NO. 28957</b>

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On February 5, 2002, Avista Utilities (Avista) filed an Application for approval of an Agreement Allocating Territory between the Avista and Kootenai Electric Cooperative (Kootenai). According to the Application, this filing was made pursuant to the Idaho Electric Supplier Stabilization Act (ESSA), *Idaho Code* § 61-332 *et. seq.* and Order No. 28681, which approved the service territory agreement between Avista and Kootenai in Case No. AVU-E-01-2.

**BACKGROUND**

In December 2000 and February 2001, the Idaho Legislature amended portions of the ESSA. In particular, *Idaho Code* § 61-333 was amended to provide that all service agreements which allocate territory or customers between electric suppliers (such as Avista and Kootenai) be filed with the Commission. *Idaho Code* § 61-333(1) now provides in pertinent part that

the commission shall after notice and opportunity for hearing, review and approve or reject [such] contracts...between cooperatives and public utilities....the commission shall approve such contracts only upon finding that the allocation of territories or consumers is in conformance with the provisions and purposes of this act.

*Idaho Code* § 61-333(1) (2001). As set out more fully in *Idaho Code* § 61-332, the purposes of the ESSA are to: (1) promote harmony among and between electric suppliers; (2) prohibit the “pirating” of consumers served by another supplier; (3) discourage duplication of electric facilities; (4) stabilize the territory and consumers served by the suppliers; (5) actively supervise certain conduct of the suppliers.

## NOTICE OF APPLICATION

YOU ARE HEREBY NOTIFIED that the Agreement Allocating Territory (Agreement) submitted for the Commission's review was executed on December 29, 2001. This Agreement was reached because Keystone Partners, LLC and Pleasant View Investments, LLC (Developer) requested that Avista and Kootenai install facilities to provide three-phase electric service to consumers who may construct service entrances within the Developer's real property. Agreement at 1. The Developer owns an interest in real property known as "Expo at Post Falls," "Expo at Post Falls Fourth Edition," and "Expo at Post Falls Fifth Edition" in Kootenai County, Idaho as depicted on the plat map labeled "Exhibit A" that accompanies the Application. *Id.*

YOU ARE FURTHER NOTIFIED that both Kootenai and Avista have existing service lines on or near the Developer's real property. *Id.* Furthermore, both are able and willing to supply electric service to consumers who may establish service entrances on the Developer's property. *Id.* Pursuant to the provisions of the ESSA, Avista and Kootenai have entered into an Agreement Allocating Territory within the confines of the Developer's real property. The parties entered into the Agreement to: 1) avoid unnecessary duplication of facilities; 2) avoid disputes as to which utility is entitled to provide service to new service entrances; and 3) provide the best possible service to consumers who locate their electric service entrances on the Developer's real property. *Id.*

YOU ARE FURTHER NOTIFIED that as depicted in "Exhibit A," the Agreement divides the Developer's real property into territories labeled "Kootenai Electric Service Area" and "Avista Service Area." The Agreement allows Avista and Kootenai to extend their facilities, to the exclusion of the other, within the territory allocated to it in "Exhibit A." *Id.* at 2. Within their respective territories, Avista and Kootenai shall each provide line extensions and service to consumers pursuant to the provisions of their line extension policies, rate schedules, or tariffs in force at the time such extension or service is requested. *Id.*

YOU ARE FURTHER NOTIFIED that Avista and Kootenai also agree that any line extension which serves a service entrance located within the territory allocated by this Agreement shall be considered an "existing service line" for the purpose of determining which electric supplier is entitled to provide electric service to a new service entrance located in territory not allocated pursuant to the provisions of this Agreement. *Id.*

YOU ARE FURTHER NOTIFIED that the Agreement states that it is subject to the approval of the Idaho Public Utilities Commission and if rejected, shall be void *ab initio*. *Id.* at 2-3. If the Commission approves the Agreement, it shall be binding upon the parties, their successors and assigns. *Id.* at 3.

### NOTICE OF MODIFIED PROCEDURE

YOU ARE FURTHER NOTIFIED that *Idaho Code* § 61-333(1) requires the Commission to review Territory Allocation Agreements between public utilities and electric cooperatives. Pursuant to this statute, the Commission must determine whether the allocation of consumers is in conformance with the provisions and purposes of the ESSA.

YOU ARE FURTHER NOTIFIED that the Commission has determined that the public interest may not require a formal hearing in this matter and will proceed under Modified Procedure pursuant to Rules 201 through 204 of the Idaho Public Utilities Commission's Rules of Procedure, IDAPA 31.01.01.201 through .204.

YOU ARE FURTHER NOTIFIED that any person desiring to state a position on this Application may file a written comment in support or opposition with the Commission **on or before Tuesday, March 12, 2002**. The comment must contain a statement of reasons supporting the comment. Persons desiring a hearing must specifically request a hearing in their written comments. Written comments concerning this application shall be mailed to the Commission and the Applicant at the addresses reflected below:

COMMISSION SECRETARY  
IDAHO PUBLIC UTILITIES COMMISSION  
PO BOX 83720  
BOISE, IDAHO 83720-0074

Street Address for Express Mail:  
472 W WASHINGTON ST  
BOISE, ID 83702-5983

KELLY NORWOOD  
VICE PRESIDENT ENERGY RESOURCES  
AVISTA CORPORATION  
1411 E MISSION AVENUE  
PO BOX 3727  
SPOKANE, WA 99220-3727

All comments should contain the case caption and case number shown on the first page of this document.

YOU ARE FURTHER NOTIFIED that the deadline for Avista Utilities to file written reply comments with respect to their Application in this case is **Friday, March 15, 2002**.

YOU ARE FURTHER NOTIFIED that if no written comments are received within the time limit set, the Commission will consider this matter on its merits and enter its Order

without a formal hearing. If written comments are received within the time limit set, the Commission will consider them and, in its discretion, may set the same for formal hearing.

YOU ARE FURTHER NOTIFIED that the Application together with supporting workpapers, testimonies and exhibits, have been filed with the Commission and are available for public inspection during regular business hours at the Commission offices. The Application and testimonies (excluding exhibits) are also available on the Commission's Website at [www.puc.state.id.us](http://www.puc.state.id.us) under the "File Room" icon.

YOU ARE FURTHER NOTIFIED that all proceedings in this case will be held pursuant to the Commission's jurisdiction under Title 61 of the Idaho Code and that the Commission may enter any final Order consistent with its authority under Title 61.

YOU ARE FURTHER NOTIFIED that all proceedings in this case will be held pursuant to the Commission's jurisdiction under Title 61 of the Idaho Code and specifically *Idaho Code* §§ 61-332 and 61-333(1).

YOU ARE FURTHER NOTIFIED that all proceedings in this matter will be conducted pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

### **ORDER**

IT IS HEREBY ORDERED that this matter be processed under our rules of Modified Procedure. IPAPA 31.01.01.201-204.

IT IS FURTHER ORDERED that the Commission does hereby solicit written comment on this Application from the public, Applicants and Commission Staff in accordance with the foregoing schedule.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 20th day of February 2002.

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PAUL KJELLANDER, PRESIDENT

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MARSHA H. SMITH, COMMISSIONER

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DENNIS S. HANSEN, COMMISSIONER

ATTEST:

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Jean D. Jewell  
Commission Secretary

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